BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHIRLEY A. STARR	)	
Claimant	)	
VS.	)	
	)	Docket No. 202,836
BEECH AIRCRAFT CORPORATION	)	
Respondent	)	
Self-Insured	)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated October 25, 1995.

ISSUES

Respondent requests Appeals Board review of the sole issue of whether claimant's accidental injury arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether claimant sustained an accidental injury arising out of and in the course of her employment is a jurisdictional issue subject to review by the Appeals Board. See K.S.A. 44-534a(a)(2).

The basic facts of this case are not disputed. The claimant was severely injured in an automobile accident that occurred on September 29, 1994 at approximately 3:36 p.m. immediately after she had completed her regular work shift. Claimant was a long-time employee of the respondent having commenced her employment on October 8, 1979. She was employed in Plant 3 and had parked in Plant 3's parking lot since she had started working for the respondent. Claimant's injuries included brain damage as a result of a traumatic closed-head injury.

Three lanes of traffic exit from the subject parking lot. On the date of the accident, claimant was exiting from the parking lot in the north outside lane driving west out of the

parking lot. The lanes of traffic exiting from the parking lot empty onto Webb Road, a four-lane city street that runs north and south in front of the parking lot. During a shift change, the evidence established that the employees drove their cars bumper-to- bumper out of the parking lot in a rapid fashion onto Webb Road. On the day in question, claimant, instead of turning north, or right into the north-bound lanes of Webb Road, turned south, crossing the north-bound lanes of Webb Road into the south-bound lanes of Webb Road. Claimant then attempted to occupy the west lane of the two south-bound lanes of Webb Road but was struck approximately one foot from the rear corner of her vehicle by another employee driving and exiting from the center lane of the parking lot attempting to occupy the same west lane of the south-bound lanes of Webb Road. The force of the collision turned the claimant's vehicle sideways into the path of the pickup, which again hit the claimant's vehicle in the side. The claimant's vehicle, after this impact, accelerated across to the north-bound lanes of Webb Road where claimant was hit two more times before coming to rest along the east lane of the north-bound lanes of Webb Road.

The north lane that the claimant was using to exit the parking lot was marked with an arrow which indicated a right-hand turn lane only. However, claimant testified that she had turned left from that lane on many occasions. Other employees testified that they had never seen anyone turn left from the north lane. When this accident occurred, there is no question that claimant had finished her employment duties and was on her way home. The accident also occurred on a public street and not on the employer's premises.

Before an employer is liable for an employee's injuries pursuant to the workers compensation act, the employee has to suffer a personal injury by accident that arises out of and in the course of his employment with the respondent. See K.S.A. 44-501(a). Generally, employees may not recover workers compensation benefits if they are injured traveling to and from work. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984). K.S.A. 44-508(f) contains what is commonly known as the "going and coming rule" which also provides the following exceptions to this general rule:

> "The words `arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer."

The Administrative Law Judge found that claimant's injuries arose out of and in the course of her employment with the respondent as the injuries arose out of the negligence of the employer or the employer's employee, Mr. Murphy. Mr. Murphy was the driver of the pickup truck that was involved with the first collision with claimant's vehicle. The Administrative Law Judge went on to find alternatively, that this case falls under the special risk or hazard exception of the "going and coming rule." The Appeals Board has reviewed the preliminary hearing record and finds that the Administrative Law Judge's decision that this claim is covered under the workers compensation act should be affirmed. The Appeals Board, however, does not find that claimant's injuries arose out of the negligence

of the employer or the employer's employee. The question as to the proximate cause of the automobile accident is very much in dispute. A determination could easily be made that the proximate cause of the accident was claimant's own negligence in turning left from the north right lane of the parking lot into the south-bound lanes of Webb Road.

The Appeals Board finds that the recent case of Chapman v. Beech Aircraft Corp., 258 Kan. 653, 907 P.2d 828 (1995), which coincidentally involved the same respondent, addressed the interpretation of the "going and coming rule" which likewise controls this case. The court held in Chapman that the workers compensation act applied to an employee that received injuries while she was crossing, on foot, a busy public street (Central Street) in Wichita, Kansas, while on her way to work. She was struck by a vehicle while attempting to cross Central Street in the middle of the block. The respondent owned all of the property on both sides of Central Street. The court held that the special hazard exception to the "going and coming rule" contained three elements: (1) the worker is on the only available route to or from work; (2) the route involves a special risk or hazard; and (3) the route is not used by the public except in dealing with the employer. *Id*. Syl. ¶ 2. The court determined that the heavy-traveled major artery involved a special risk or hazard and since the company owned the real estate on both sides of the street, that the route was the only available route to or from work and that such route was not used by the public except in dealing with the employer. *Id*. Syl. ¶ 4.

In the case at hand, the Appeals Board finds the only available route for the claimant to leave the parking lot was the exit onto Webb Road, a heavily traveled major street that involves a special risk or hazard. The parking lot exit was used only by the employees of the respondent and not used by the general public except in dealing with the respondent. Accordingly, claimant's injuries arose out of and in the course of her employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated October 25, 1995, should be, and is hereby, affirmed based on the special risk or hazard exception to the "going and coming rule" and not that claimant's injuries arose out of the negligence of the employer or the employer's employee.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Bradley Pistotnik, Wichita, Kansas
David S. Wooding, Wichita, Kansas

Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director